

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER DISPUTED
COVERAGE DISABILITY DECISION NO. DC-86
AS A PRECEDENT DECISION PURSUANT TO
SECTION 409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

PRECEDENT
DISABILITY DECISION
No. P-D-149

SEARS, ROEBUCK AND COMPANY
(Appellant-Self-Insurer)

FORMERLY DISPUTED COVERAGE DISABILITY DECISION No. DC-86

The above-named insurer on May 1, 1951, appealed from the decision of a Referee (LA-DC-161) which held that the claimant was entitled to unemployment compensation disability benefits under Voluntary Plan No. _____ and that the Department of Employment /now Department of Human Resources Development/ was not liable for the payment of such benefits.

Based on the record before us, our statement of facts, reasons for decision, and decision are as follows:

STATEMENT OF FACTS

Effective September 24, 1950, the claimant filed a claim for unemployment compensation disability benefits in the Long Beach Disability Office of the Department of Employment /now Department of Human Resources Development/. On October 4, 1950, the Department determined that the claimant was eligible for benefits but covered by the Voluntary Plan herein under Section 455 of the Unemployment Insurance Act /now sections 3252, 3253 and 3263 of the Unemployment Insurance Code/. In conformity with Section 311 of the Unemployment Insurance Act /now section 2712 of the Unemployment Insurance Code/ and Section 292 /now section 2712-17/ of Title 22 of the California Administrative Code (then in effect) the Department

forwarded a copy of the claim and medical report to the Voluntary Plan insurer with a request that disability benefit payments be made to the claimant by the insurer. On October 9, 1950, the insurer denied liability for the following reason: The claimant "voluntarily resigned to remain at home on March 16, 1950." The letter also stated that the insurer and employer "were advised that the above claimant had a normal pregnancy and that there were no complications. The date of return to work as 10-9-50 was the regular 6-week routine checkup." The Department, upon receipt of notice of denial of the claim proceeded to pay disability benefits to the claimant and initiated the present proceeding for determination of coverage.

The claimant was last employed as a salesclerk by the appellant for approximately seven months until March 16, 1950, when she voluntarily left her work because of pregnancy. The claimant was approximately three months' pregnant at that time. She had the usual symptoms accompanying normal pregnancy and was at that time neither incapacitated from performing her work nor advised by her physician to discontinue working. She decided of her own accord to cease working until her child was born. The claimant requested a leave of absence but this was not granted. It was her intent to return to work as soon as she was able after the birth of her child.

On or about August 15, 1950, the claimant contracted pleurisy. On August 26, 1950, while still suffering from pleurisy, she gave birth to her child. The doctor's certificate in support of her claim indicates the duration of her disability to October 9, 1950, which was six weeks after the termination of her pregnancy. The prognosis was on the basis of the normal pregnancy. The claimant, however, continued to be disabled by reason of her pleurisy affliction beyond October 9, 1950, and until November 2, 1950, when she was released by her physician.

The appellant denies liability on the grounds that the claimant withdrew from the labor market when she left her last employment, and that she did not leave her employment by reason of any disability connected with pregnancy and furthermore that her claim is based on a disability not connected with or arising out of her pregnancy.

The pertinent provisions of the Voluntary Plan provide as follows:

"F. LIMITATIONS:

- "1. No benefits will be paid for any disability caused by or resulting from pregnancy up to the termination of such pregnancy and for a period of four weeks thereafter."

* * * * *

"G. INDIVIDUAL TERMINATION: The participation of any employee under this plan shall terminate:"

* * * * *

- "2. An employee who ceases to be actively employed by the employer because of resignation, dismissal, being pensioned, or retired, shall automatically lose all rights afforded by this plan, immediately upon such resignation, dismissal, being pensioned, or retired.

- "3. Any employee who ceases to be actively employed because of lay-off or leave of absence without pay which extends for a period of two weeks or more shall automatically lose all rights afforded by this plan at the end of such two weeks. There shall be no refund of contributions which have been paid by such employees."

REASONS FOR DECISION

Section 201 of the California Unemployment Insurance Act now section 2626 of the Unemployment Insurance Code provides as follows:

"'Disability' or 'disabled' includes both mental or physical illness and mental or physical injury. An individual shall be deemed disabled in any week in which, because of his

physical or mental condition, he is unable to perform his regular or customary work; provided, however, that in no case shall the term 'disability' or 'disabled' include any injury or illness caused by or arising in connection with pregnancy up to the termination of such pregnancy and for a period of four weeks thereafter."

Under the provisions of this section benefits are payable under the State Plan only in the event the individual is disabled from any injury or illness caused by or arising in connection with pregnancy after four weeks from the date of the termination of the pregnancy. There is nothing in the language of Section 201 which requires that as a condition precedent to the payment of disability benefits, the claimant must have been incapacitated from performing her work at the time she left her employment. Eligibility for benefits is not dependent on the physical condition of the claimant at the time she leaves her employment but on her physical condition after four weeks from the date of the termination of her pregnancy.

Article F 1 of the Voluntary Plan provides for similar coverage in pregnancy cases and on the basis of this article there would be no issue with respect to the claimant's entitlement to benefits in the event she was disabled by reason of her pregnancy after four weeks from the date of the termination thereof. The issue arises, therefore, as to the effect of the termination of coverage provisions of Article G 2 and 3 of the Voluntary Plan.

In Disability Decision No. 211-146, we interpreted similar pregnancy and termination of coverage provisions of a Voluntary Plan and held that the termination of coverage provisions are not applicable to pregnancy cases for the reason that to hold otherwise would render the Voluntary Plan less favorable than the State Plan. Our rationale in the cited case is equally applicable to the instant case.

In Disability Decision No. 307-489, we held that our rationale in Disability Decision No. 211-146 applies only when the disability arises out of or in connection with the pregnancy, and only to the period commencing four or five weeks after the termination thereof, depending upon the provisions of the Voluntary Plan as to a waiting period.

There is nothing in our language of the cited cases which implies or infers that the pregnancy must have disabled or incapacitated the claimant from performing her work at the time she left her employment before liability will attach for her disability commencing after four weeks from the date of termination of her pregnancy. We recognize, therefore, that the liability of the Voluntary Plan insurer in this case is contingent upon the happening of the following event, namely, that the claimant is found to be disabled from any injury or illness caused by or arising in connection with her pregnancy for the period of time commencing after four weeks of the date of the termination of the pregnancy.

In the instant case, the evidence establishes that the claimant became disabled from pleurisy on or about August 15, 1950, and prior to the delivery of her child and that this disability continued beyond the termination of her pregnancy. Accordingly, as of that date the contingency, under which the Voluntary Plan insurer would become liable for the payment of benefits did not arise. In accordance with our rationale in Disability Decision No. 307-489, the claimant is entitled to benefits for this disability from the Disability Fund which is chargeable to the extended liability account.

In Disability Decision No. 268-342, we held that it is sufficient for the purpose of the Unemployment Insurance Act and the regulations adopted pursuant thereto, to establish the existence of a disability and to prove that the period of disability has not been interrupted. It is not necessary to prove that the same ailment was responsible for the entire period of disability. In the instant case the claimant had one continuous period of disability from on or about August 15, 1950, to November 2, 1950, when she recovered from her pleurisy. Liability once having attached to the Disability Fund it continued throughout the entire period of her disability and the fact that she was disabled during a portion of this period by reason of her pregnancy is immaterial.

DECISION

The decision of the Referee is reversed. Benefits are not payable under the provisions of Voluntary Plan No. 1. Benefits are payable from the Disability Fund and are chargeable to the extended liability account.

Sacramento, California, October 3, 1972

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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